Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS

Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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53 pp

QUESTIONS PRESENTED

1. Was the "strict compliance" standard under 5 U.S.C. Section 8705(a) misapplied by the District and Circuit Courts, where the insured prepared a beneficiary designation in his own hand in the presence of two (2) attesting witnesses, and the form was later accepted by the employing office prior to his death?

2. Does the "signed . . . writing" element of 5 U.S.C. Section 8705(a) require a marking in the signature box, as held by the District Court, or were Petitioners, as intended beneficiaries, entitled to demonstrate that the designation was valid because the decedent printed his name, and completed the form in every other respect?

PARTIES TO THE PROCEEDING

Petitioners, Mary Thomas and Ivy Thomas a/k/a Ivy Dotson were the Plaintiffs in the District Court and Appellants in the Court of Appeals. Respondent Metropolitan Life Insurance Company was a Defendant in the District Court and Appellee in the Court of Appeals. Respondent Donna Powell-Thomas was a Plaintiff/Intervenor in the District Court and Appellee in the Court of Appeals. Stewart Funeral Home, Inc. was joined as a Plaintiff in the District Court. Stewart Funeral Home, Inc. has not actively participated in the proceedings.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS

Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners, Mary Thomas and Ivy Thomas respectfully request that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in this case on February 24, 1997.

OPINIONS BELOW

The Judgment of the Court of Appeals (App. D at 5a-6a) is reported at 111 F.3d 963 (D.C. Cir. 1997). [The foregoing citation is a table reference and is not an opinion.] The Court of Appeals' Orders denying the Petition for Rehearing (App. A at 1a-2a) and Suggestion for Rehearing In Banc (App. B at 3a) are not reported. The Order of the District Court (App. F at 8a-10a) is reported at 921 F. Supp. 810 (D.C. 1996).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on February 24, 1997. A Petition for Rehearing and a Suggestion for Rehearing In Banc, filed on March 25, 1997, was denied on June 11, 1997. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1) (1994).

LEGAL PROVISIONS INVOLVED IN THIS CASE

1 U.S.C. Section 1 (1994).
5 U.S.C. Section 8705(a) (1994).
5 C.F.R. Sections 870.901-.902 (1995).

These provisions are set forth in the Petitioner's Appendix (App. G-J at 12a-16a).

STATEMENT OF THE CASE

Decedent Gerald C. Thomas, Jr., an employee of the District of Columbia Lottery and Charitable Games Control Board, participated in the Federal Employees Group Life Insurance (FEGLI) Program, which is administered by Respondent Metropolitan Life Insurance Company (Metlife). He insured his life for One Hundred Ninety Seven Thousand Dollars 00/100 ($197,000.00) under this program. On August 21, 1989, and April 7, 1993, Mr. Thomas named his wife, Respondent Donna Powell-Thomas, as the beneficiary of death benefits under his policy.

In October 1993, Donna Powell-Thomas filed for divorce against Gerald C. Thomas, Jr. in the Circuit Court for Prince George's County, Maryland. Mr. and Mrs. Thomas were by that time living separate and apart.

On October 13, 1993, the Decedent changed the earlier beneficiary designation by naming his mother, Mary Thomas, and his sister, Ivy Thomas, Petitioners herein, as the only recipients of the FEGLI death benefits. Mr. Thomas completed the document by writing his name and address, and by checking the box indicating "I have signed this form . . ." Two (2) co-employees signed as attesting witnesses. However, he made no marking within the signature box.

The employing office accepted and processed the form, which was forwarded to the District of Columbia

Office of Payroll and Retirement for filing. After the Office of Payroll and Retirement processed the form on October 15, 1993, the duplicate copy was sent back to Decedent's employing office.

Gerald C. Thomas, Jr., died on February 2, 1994, before the divorce proceedings were concluded. After his death, Mary Thomas and Ivy Thomas claimed the proceeds of the FEGLI policy at the invitation of the Decedent's employer. Donna Powell-Thomas also filed a claim for the FEGLI proceeds based on the previous Designation of Beneficiary forms. Only during the claims process did any issue arise about an irregularity in the Designation of Beneficiary completed by the decedent on October 13, 1993. Metlife thereafter denied all claims to the proceeds.

Petitioners, Mary Thomas and Ivy Thomas, filed this action against Metlife on August 31, 1994, in the United States District Court for the District of Columbia. Petitioners claimed entitlement to the proceeds of the life insurance policy in the name of Gerald Thomas, Jr. pursuant to the Designation of Beneficiary form completed by him on October 13, 1993. Jurisdiction was asserted under 28 U.S.C. Sections 1331 and 1332 (1994).

Respondent, Donna Powell-Thomas, filed a Motion for Leave to Intervene and a Declaratory Judgment. Respondent's basis for the Motion was that the Designation of Beneficiary form completed on October 13, 1993 was invalid because the form lacked

a signature. She asserted the prior Designation of Beneficiary forms completed on August 21, 1989, and April 7, 1993, remained valid. Respondent's Motion for Leave to Intervene and to file a Declaratory Judgment was granted.

Respondent, Metlife, deposited the policy proceeds into the Registry of the District Court pursuant to 28 U.S.C. Section 1335 and Federal Rules of Civil Procedure, Rule 67. Upon the Motion of Metlife, Stewart Funeral Home was added as a party Plaintiff, but has not otherwise participated in this case.

The Petitioners moved for Summary Judgment and requested a hearing. Some thirteen (13) months later, the District Court entered an Order denying Petitioners' Motion for Summary Judgment and Request for Hearing, and granting Respondent Donna Powell-Thomas' Motion for Declaratory Judgment (treated by the Court as a Motion for Summary Judgment). No hearing of any kind was ever conducted by the District Court.

In its opinion, the District Court, relying on prior case law requiring "strict compliance" with FEGLIA, ruled that "the decedent's acts of printing his name and checking the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute". (App. F at 9a). Under the reasoning of the District Court, since the form was not marked within the signature box, Petitioners could not demonstrate a valid change of beneficiary even considering the

Affidavits of the two (2) attesting witnesses.

The Petitioners, relying upon 28 U.S.C. Section 1291 (1994), appealed to the Court of Appeals for the District of Columbia. They also filed a Motion to Stay Judgment Pending Disposition of Appeal, which was granted on January 31, 1996.

The Court of Appeals, despite Petitioners' request for a hearing, affirmed, without argument, the District Court's grant of Summary Judgment to Respondent Donna Powell-Thomas. The panel determined an opinion was not needed, and entered its per curiam judgment on February 24, 1997. (App. D at 5a).

The Court of Appeals denied the Petitioners Suggestion for Rehearing In Banc with Judge Garland not participating. (App. B at 3a). The Petitioners' Petition for Rehearing was also denied. However, Judge Ginsburg of the original panel would have granted the Petition for Rehearing. (App. A at 1a-2a).

REASONS FOR GRANTING THE PETITION

This is a case of first impression with significant impact on 2.5 million federal government employees in every branch of government and 1.5 million federal retirees. At issue is the proper method for designating beneficiaries of a Federal Government Life Insurance Policy. Both courts below have failed to apply the definition of a "signature" found in 1 U.S.C. Section 1

(1994), and have instead focused on strict compliance with the Designation of Beneficiary form itself; a form that the Courts acknowledge is not even required by the Federal Employees Group Life Insurance Act (FEGLIA). (App. D at 5a and App. F at 9a-10a). This approach exalted form over substance in a manner wholly inconsistent with the statute.

The Court of Appeals affirmed the District Court decision without oral argument, despite the record showing that Petitioners' Request for Hearing had been denied in District Court. The District Court found as a matter of law that where a standard form was used, the insured was required to write his name in the signature box. The Court of Appeals never addressed that holding, but instead applied a "preponderance of the evidence" standard in assessing Petitioners' presentation before the District Court. This affirmance implied that Petitioners were afforded a trial in this matter. However, no hearing of any type has been conducted at the trial or appellate levels.

Additionally, this Court should grant certiorari because of a different outcome in another Circuit on a set of facts almost identical to this case. The United States District Court for the Middle District of Florida (The Honorable William Terrell Hodges), on July 7, 1997, ruled that "strict compliance" did not require a marking within the signature box. Furthermore, the Court found that since the insured printed his name, there were conflicting inferences on the question of intent to be weighed by the trier of fact. It denied

summary judgment as to all parties. *Metropolitan Life Ins. Co. v. Grant, et al.*, No. 96-136-Civ-Oc-10 (M.D. Fla. July 7, 1997) (Order Denying Summary Judgment) (App. K at 17a-26a). The approaches taken by the District Court and the Court of Appeals in this case were considered and specifically rejected by Judge Hodges as "not persuasive . . ." (App. K at 22a).

No decisions listed under Title 1, Section 1 of the United States Code Annotated indicate that this Court has interpreted the signature definition of 1 U.S.C. Section 1. Accordingly, this is an important question of first impression of federal law that should be settled by this Court under the facts and circumstances presented.

The millions of federal employees and retirees are entitled to guidance and clarification of the procedures utilized to carry out their intentions to change beneficiaries as their life circumstances dictate. If review is declined, the right of an insured to name a beneficiary will be severely limited. That result would clearly contradict the legislative intent of Section 8705(a) of the FEGLIA statute. A decision which distorts the law and underlying policy considerations should not stand without this Court's further review, especially considering the summary proceedings below.

ARGUMENT

I. THE COURTS BELOW MISAPPLIED THE "STRICT COMPLIANCE" STANDARD UNDER 5 U.S.C. SECTION 8705(a), SINCE THERE IS NO REQUIREMENT THAT AN INSURED MARK THE SIGNATURE BOX TO SATISFY THE "SIGNED . . . WRITING" ELEMENT OF THE STATUTE

The case *sub judice* concerns the proper method for designating a beneficiary in accordance with 5 U.S.C. Section 8705(a). Congress amended the FEGLIA statute in 1966 in reaction to a Ninth Circuit decision validating a Designation of Beneficiary found in a decedent's Will. *See Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961). Administrative uniformity would have been lost in allowing an insured to change a beneficiary by will or some other document without insisting on the processing of the change by the appropriate agency. Thus the amendment clarified the legislative intent that the order of precedence set forth in the statute prevail over any extraneous document not received in the employing office before an insured's death. S. Rep. No. 1064, 89th Cong., 2d Sess. 2 (1996), reprinted in 2 U.S.C.C.A.N. 2070, 2071. "Congress sought merely to require official receipt of a designation and not to further limit the right of an insured to name a beneficiary". *Fair v. Moore*, 397 A.2d 976, 978 (D.C. App. 1979).

The Courts below erred in holding the Designation of Beneficiary invalid because the insured

made no mark in the signature box. The result is to impose an impermissible restriction on the right to name a beneficiary, such that the policy proceeds go to the person whom the insured specifically wished to exclude. Except for one explainable omission, the insured, decedent Gerald C. Thomas, Jr., in all respects completed the form in his own hand, and printed his name after designating the Petitioners as beneficiaries. This case does not involve an extraneous document, nor is there anything in the text of the FEGLIA or its legislative history to suggest that the signature must be placed on a particular line or place on the Designation of Beneficiary Form. A signature is valid without regard to where it may appear on a document. E.g., *In Re Estate of Hall*, 328 F. Supp. 1305, 1309 (D.D.C. 1971); *Ex Parte Cardoza*, 109 A. 93 (Md. 1919); *Reidy v. Almich*, 418 P.2d 390 (Ariz. App. 1966).

Petitioners recognize that courts have consistently required strict compliance with the FEGLIA statute. *See, e.g., Ward v. Stratton*, 988 F.2d 65 (8th Cir. 1993) (writing not witnessed or received in the employing office before the date of death), *Adams v. Macy*, 314 F. Supp. 399 (D. Md. 1970) (witness to the writing was also a beneficiary in direct violation of 5 U.S.C. Section 8705(a), and 5 C.F.R. 870.902(c)); *Metropolitan Life Insurance Co. v. Trainor*, 754 P.2d 427 (Colo. App. 1988) (writing to change beneficiary did not specify FEGLI policy). This rule was recognized in the District of Columbia in *Burleson v. Burleson*, 277 A.2d 647, 648 (D.C. App. 1971) where the District of Columbia Court of Appeals stated "[L]iteral compliance with the

statute is required when designating or changing beneficiaries . . ."

However, the effect of the District Court's ruling and the Court of Appeals' judgment is to require strict compliance with the form itself. The strict compliance standard was formulated to serve the statutory purpose, rather than to create artificial hurdles for validating beneficiary designations. *See Fair v. Moore*, 397 A.2d 976 (D.C. App. 1979). Petitioners seek no departure from the "strict compliance" standard, and request no waiver of the signature requirement. However, due process necessitates that they have an opportunity to demonstrate the decedent's purpose and intent in preparing the document.

By mandating that the Designation of Beneficiary be "signed," Congress provided that the document be authentic, and that the insured affirm a present intention to be bound by its contents. Section 8705(a) and its related regulations do not define the term "signed". See 5 C.F.R. Sections 870.901-.902 (1995). The trial court failed to look anywhere but to the form itself for a definition of the term "signed". 1 U.S.C. Section 1 provides general meanings for certain words used in Acts of Congress not otherwise defined. "Signature" is defined as "includ[ing] a mark when a person making the same intended it as such". U.S.C. Section 1 (1994).

The Courts below failed to recognize that courts have permitted signatures to take many shapes and forms. *E.g.*, *United States v. Wexler*, 657 F. Supp. 966

(E.D. Pa. 1987); *Carna v. Bessemer Ement Co.*, 558 F. Supp. 706 (W.D. Pa. 1983); *State v. Schell*, 224 N.E. 2d 49 (1967); *Plemens v. Diddle-Glaser, Inc.*, 224 A.2d 464 (1966). The opinions of the District and Circuit Courts are devoid of any analysis of the words "signed" or "signature," nor do they contain any discussion of relevant case law interpreting these terms.

The Court of Appeals based its affirmance on the ground Petitioners "failed to prove by a preponderance of the evidence that the insured in this case signed the contested form". (App. D at 5a). Yet, the Court failed to articulate what further proof would be needed. Viewed in its entirety, this transaction constituted a complete expression of decedent's compliance with the statute, including a signing of the document. The decedent completed the form in his own hand, checked the box with the notation "I have signed this form in the presence of two (2) witnesses who have signed below", and his personnel office filed the form with the appropriate office. The two (2) witnesses believed the form had been signed, as evidenced by the Affidavits submitted with Petitioner's Motion for Summary Judgment and Request for Hearing in the District Court. There can be no doubt of the decedent's present intention in preparing this form and printing his name.

Furthermore, the completed form was processed by the employing office and the District of Columbia Office of Payroll and Retirement. Neither office found any defect in the Designation of Beneficiary form. The decedent had no reason to believe the change in

beneficiary was not effective. A reasonable trier of fact could conclude from this evidence that the decedent intended his marks to constitute his signature.

The result urged by Petitioners falls within the "strict compliance" standard enunciated by the courts. This Court must not permit a distortion of that standard to work an injustice in this case and to create further uncertainty for the millions of affected federal government employees and retirees.

II. THE DECISION BELOW CONFLICTS WITH THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA IN A FACTUALLY SIMILAR CASE, RESULTING IN DIFFERENT CRITERIA FOR VALIDATING BENEFICIARY DESIGNATIONS OF FEDERAL EMPLOYEES AND RETIREES

Review by this Court is further compelled by the decision of the United States District Court for the Middle District of Florida, in the case of *Metropolitan Life Insurance Company v. Grant, et al.*, Case Number 96-136-CIV-OC-10. (App. K at 17a). On July 7, 1997, the Honorable William Terrell Hodges, United States District Judge, issued an Order denying Motions for Summary Judgment on the ground that the facts surrounding the execution of the beneficiary form permitted conflicting inferences that should be weighed by the trier of fact. The facts of that case are remarkably similar to the case *sub judice*, except that

unlike Mr. Thomas, the decedent in *Grant* failed to check the box noting "I have signed this form in the presence of two (2) witnesses who have signed below".

The *Grant* Court considered the decisions of the District Court and the Court of Appeals in this case, and observed as follows:

> "While the *Thomas* approach is certainly convenient and possesses superficial appeal, it is not persuasive to me. To be sure, FEGLIA requires strict compliance with its beneficiary designation provisions and deviations from those provisions will render an attempted designation invalid. (Internal citations omitted). However, this is not a case in which a claimant requests that partial compliance with the statute be accepted, or that non-compliance be excused. The statute does not define the term "sign". The statute does not require that a standard form be used and filled out according to its terms in order to change a beneficiary designation. In short, there is no specific statutory requirement, with which strict compliance could be required, that Mr. Gayton ran afoul of in failing to sign the designated signature line. The issue in this case, therefore, is whether Mr. Gayton signed the beneficiary designation at all." (App. K at 22a).

The *Grant* Court, contrary to the District Court and Court of Appeals in this case, stressed that the form itself was not controlling nor was the insured's usual method of signing dispositive of the issue.

In *Grant* the Court did not grant Summary Judgment because of the conflicting inferences created from the underlying facts of the case. Therefore, the parties will have their day in court. In contrast, the decisions of the District Court and the Court of Appeals in this case were delivered without the parties having the opportunity for face to face discourse. Not only was the Petitioners' Request for Hearing at the District Court level denied, but their opportunity to present argument before the Court of Appeals was also denied. A question of federal law affecting all federal employees and retirees should not be decided without an opportunity for an oral hearing to present a full consideration of the facts and the law.

If this Court denies review, the right of Gerald C Thomas, Jr. to contract for the payment of his life insurance policy will have been frustrated, and affected employees and retirees will be subject to different standards for validating beneficiary designations.

CONCLUSION

For the reasons stated above, a Writ of Certiorari should be granted to review the decision of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied. Appellants have failed to demonstrate that rehearing is warranted. The court wishes to clarify, however, that although it may appear from the judgment filed February 24, 1997, that the court weighed the evidence and decided the disputed issue, this court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have had the burden at trial of establishing that fact. *See Rollins by Rollins v. Metropolitan Life Ins. Co., Inc.*, 912 F.2d 911, 915 (7th Cir. 1990) (person claiming entitlement to proceeds of FEGLI policy bears burden of proving the contested fact by a preponderance of the evidence). "[W]here the nonmoving party shoulders the burden of proof at trial, the movant's burden is met by a sufficient showing 'that there is an

absence of evidence to support the nonmoving party's case.'" *Frito-Lay, Inc. v. Willoughby*, 863 F.2d 1029, 1032 (D.C. Cir. 1988) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Further, "[t]he [Supreme] Court has said that summary judgment should be granted where the evidence is such that it would require a directed verdict for the moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986) (internal quotations omitted). This is such a case. The court thus determined that there are no genuinely disputed issues of material fact.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Deputy Clerk

Circuit Judge Ginsburg would grant the petition for rehearing.

APPENDIX B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Edwards, Chief Judge; Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellants' Suggestion for Rehearing *In Banc*, and the absence of a request by any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Robert A. Bonner
Deputy Clerk

Circuit Judge Garland did not participate in this matter.

APPENDIX C

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of appellants' motion for stay of mandate and of the response thereto, it is

ORDERED that the motion is granted. The Clerk is directed to withhold issuance of the court's mandate through July 18, 1997.

No extension of this stay will be granted.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Deputy Clerk

APPENDIX D

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the district court's order filed January 22, 1996, be affirmed. Assuming *arguendo* that an insured under a Federal Employees' Group Life Insurance ("FEGLI") policy is not required, when using a standard designation of beneficiary form, to use the space provided for the signature of the insured, appellants nonetheless failed to prove by a preponderance of the evidence that the insured in this case signed the contested form. Given that the insured signed his name by writing it in cursive on three of four designation of beneficiary forms in

evidence, including one which assigned to appellants any unpaid compensation owed to the insured and which was executed at the same time as the contested FEGLI form, the evidence as a whole does not support concluding that Thomas intended his name as printed in the informational entries on the contested form to constitute his signature.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per Curiam

APPENDIX E

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of the motion to modify the record, the opposition thereto, and the reply; and the briefs filed by the parties, is it

ORDERED that the motion to modify the record be granted. It is

FURTHER ORDERED, on the court's own motion, that this appeal be disposed of without oral argument on the basis of the record and the presentations in the briefs. The court has determined that oral argument will not assist the court in this case. *See* D.C. Cir. Rule 34(j).

Per Curiam

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY THOMAS
and
IVY THOMAS,
Plaintiffs,
and
DONNA POWELL-THOMAS,
Plaintiff-Intervenor,
v.
METROPOLITAN LIFE INSURANCE CO.,
Defendant.

Civil Action No. 94-1908 (HHG)

ORDER

This case is currently before the Court on Plaintiff-Intervenor Donna Powell-Thomas's Motion for Declaratory Judgment[1] and Plaintiffs Mary and Ivy Thomas's Motion for Summary Judgment. Upon consideration of these motions, the oppositions thereto, the replies, and the entire record in this case, the Court finds that Plaintiff-Intervenor's motion should be granted and Plaintiffs' motion should be denied.

This case involves a dispute over who is the beneficiary of decedent Gerald C. Thomas's life insurance policy. On August 21, 1989, decedent executed a beneficiary designation form ("Form 1")

1. The Court will treat this motion as a motion for summary judgment. *See Mobles v. Metropolitan Life Ins. Co.*, 1995 WL 72825, *1 (D.D.C. Nov. 29, 1995). Because the sole issue before the Court involves one of statutory interpretation, *see infra*, the Court finds this case to be amenable to disposition by summary judgment. *See* Fed. R. Civ. P. 56(c).

naming his wife, Plaintiff-Intervenor Donna Powell-Thomas, as the sole beneficiary of this Federal Employees' Group Life Insurance ("FEGLI") policy. On April 7, 1993, he executed another such form ("Form 2"), again naming Powell-Thomas as the sole beneficiary of his FEGLI policy. On October 13, 1993, decedent completed yet another form ("Form 3"),[2] this time naming Plaintiffs Mary and Ivy Thomas as the beneficiaries of 35% and 65%, respectively, of the policy. Decedent filled out Form 3 by hand, printing his name, address, and date of execution. He also checked a box preceding the statement "I have signed this form in the presence of two witnesses who have signed below." The form was duly signed by two witnesses. However, the box marked "Signature of Insured" was left blank.

The Federal Employees' Group Life Insurance Act ("FEGLIA") provides that a life insurance policy shall be paid "to the person or persons surviving at the date of [the decedent's] death, in the following order of preference":

> First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office . . . . For this purpose, a designation, change or cancellation of beneficiary in a will of other document not so executed and filed has no force or effect.

5 U.S.C. § 8705(a). The sole issue for the Court to resolve in the present case is whether the form was properly "signed" as required by the statute.

The Court finds that the decedent's acts of printing his name and checking the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute. Courts have consistently held that FEGLIA requires strict compliance with its provisions. *E.g., Ward v. Stratton,* 988 F.2d 65, 67 (8th Cir. 1993); *Adams v. Macy,* 314 F. Supp. 399, 401 (D. Md. 1970); *Metropolitan Life Ins. Co. v. Trainor,* 754 P.2d 427, 428 (Colo. Ct. App. 1988); *Burleson v. Burleson,* 277 A.2d 647, 648 (D.C. 1971). Although there is no requirement that a designation of

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2. Although as noted *infra* the form does not bear decedent's signature, it is undisputed that he completed this form.

beneficiary be submitted on any particular form, here the decedent used a standard form which clearly indicated the proper place to affix his signature. The box was glaring left blank. Strictly construing the statute, the Court finds no basis for concluding that the form was "signed" based on his handwritten name on the line designated as the area to "Print or type name" and a checkmark in a box. Decedent had previously completed such forms in a proper manner, and thus he clearly knew how to do so. Furthermore, in several places, the form tells the policy holder that it must be signed. Because it was not signed in this case, Form 3 is invalid. Thus, according to the statute, Form 2 is still in full force and effect, and decedent's wife is the proper and sole beneficiary of the policy.

Accordingly, it is, on this 22d day of January, 1996, hereby

ORDERED that Plaintiff-Intervenor Donna Powell-Thomas's Motion for Declaratory Judgment (treated as a Motion for Summary Judgment) be and is hereby GRANTED; and it is

FURTHER ORDERED that Plaintiff-Intervenor Donna Powell-Thomas be and is hereby GRANTED a declaratory judgment that she is the sole beneficiary to the FEGLI policy of decedent Gerald C. Thomas, Jr.; and it is

FURTHER ORDERED that Plaintiffs Ivy and Mary Thomas's Motion for Summary Judgment and Request for a Hearing be and is hereby DENIED; and it is

FURTHER ORDERED that the Joint Request for a Status Conference be and is hereby DENIED; and it is

FURTHER ORDERED that judgment be entered in favor of Plaintiff-Intervenor Donna Powell-Thomas; and it is

FURTHER ORDERED that the Clerk of this Court shall forthwith disburse the policy proceeds deposited into the registry of this Court to Plaintiff-Intervenor Donna Powell-Thomas.

/S/ HAROLD H. GREENE
HAROLD H. GREENE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY THOMAS and IVY THOMAS, Plaintiffs, and DONNA POWELL-THOMAS, Plaintiff-Intervenor, v. METROPOLITAN LIFE INSURANCE CO., Defendant.	Civil Action No. 94-1908 (HHG)

ORDER

It is this 31st day of January, 1996, hereby

ORDERED that this Court's order of January 22, 1996, in the above-captioned case be and is hereby amended to include the award of all interest accrued on the policy proceeds held in the registry of this Court to Plaintiff-Intervenor Donna Powell-Thomas.

/S/ HAROLD H. GREENE
HAROLD H. GREENE
United States District Judge

APPENDIX G

5 U.S.C. Section 8705(a) (1994).

Section 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to the other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

APPENDIX H

1 U.S.C. Section 1 (1994)

Section 1. Words denoting number, gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise -

"signature" or "subscription" includes a mark when the person making the same intended it as such;

APPENDIX I

5 C.F.R. Section 870.901 (1995).
Subpart I - Order of Precedence and Designation of Beneficiary

Section 870.901 Order of precedence.

(a) *Definitions.* For the purpose of this part, the following terms are defined as follows:

(1) *Child* means a legitimate child, an adopted child, or a recognized natural child but does not include a stillborn child, a stepchild , or a foster child. An individual who has attained the age 18 is considered to be an adult. However, if the age of majority in the jurisdiction in which what individual is domiciled is set at a lower age, he or she is considered to be an adult upon attaining the age designated in that jurisdiction. An adopted child does not inherit under the order of precedence specified in 5 U.S.C. 8705, other than as a designated beneficiary, from his/her natural parents but inherits from and through his or her adoptive parents. However, a child who is adopted by the spouse of his or her natural parent does inherit from that natural parent.

(2)(i) A *recognized natural child*, with respect to paternity, is one for whom the father meets one of the following:

(A) Has acknowledged paternity in writing;

(B) Has been judicially ordered to provide support;

(C) Has, before his death, been judicially decreed to be the father;

(D) Has been established as the father by a certified copy of the public record of birth or church record of baptism if the insured was the informant and so named himself as the father of the child; or

(E) Has established paternity on public records, such as school or social welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(ii) Secondary evidence to support the alleged paternity, such as evidence of eligibility as a recognized natural child under other State or Federal programs or proof of inclusion of the child as a

recognized natural child on the insured's income tax returns, may also be considered in the determination process.

(3) *Parent* means the mother or father of a legitimate child or an adopted child. The term parent includes the mother of a recognized natural child and the father of recognized natural child but only if the recognized natural child meets the definition provided in paragraph (a)(2) of this section. An individual can not inherit from a child who has been adopted by someone else. However, an individual whose spouse adopted his or her child can inherit from that child.

(4) *Duly appointed representative of the insured's estate* means an individual named in an order of a court having jurisdiction over the estate of the insured which grants the individual the authority to receive, or the right to possess, the property of the insured; and also means, where the law of the domicile of the insured has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the insured under the terms of those alternative procedures.

(b) If an insured provided in a valid designation of beneficiary that the proceeds of the insurance shall be payable to the insured's estate, or to the Executor, Administrator, or other representative of the insured's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the insured's estate under the order of precedence specified in 5 U.S.C. 8705(a), payment of the proceeds to the duly appointed representative of the insured's estate will bar recovery by any other person.

APPENDIX J

5 C.F.R. Section 870.902 (1995)

Section 870.902 Designation of beneficiary.

(a) A designation of beneficiary shall be in writing, signed, and witnessed by two people, and received in the employing office (or in OPM, in the case of: (1) An annuitant or (2) a compensationer whose basic life insurance is continued) before the death of the insured.

(b) A change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this part, shall not have any force or effect.

(c) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity (except an agency of the Federal or District of Columbia governments) may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(f) A designation of beneficiary is automatically canceled 31 days after the employee stops being insured.

(g) If an insured person provides in a valid designation of beneficiary that a designated beneficiary shall be entitled to the proceeds of the insurance only if the beneficiary survives him/her for a period of time (not more than 30 days) as specified by the designator, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary does not survive the specified period, payment of the proceeds of the insurance will be made as if the beneficiary had predeceased the insured.

APPENDIX K

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

METROPOLITAN LIFE INSURANCE COMPANY, Plaintiff, -vs- BETTYE J. GRANT, EDYEMAE LARKINS GAYTON and ESTHER MALONE (named in error as ESTELLE GAYTON), as parent and natural guardian of JESSICA L. GAYTON, Defendants.	CASE NO. 96-136-Civ-Oc-10B

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT AND TRANSFERRING CASE

Presently before the Court are the parties' cross-motions for summary judgment. The issues have been thoroughly briefed and the Court has heard oral argument.

The undisputed facts are these. At all material times until his death, Mack Arthur Gayton was employed by the United States Immigration and Naturalization Service (INS). As a federal employee, Mr. Gayton was insured under a group life insurance policy issued by the Plaintiff to the United States Office of Personnel Management (OPM) pursuant to the Federal Employees Group Life Insurance Act. 5 U.S.C. § 8701, et seq. Mr. Gayton acquired both basic and additional coverage in a total amount of $148,600.

On June 27, 1988, Mr. Gayton used a standard form generated by OPM to designate the beneficiaries of his life insurance policy. Prepared by Mr. Gayton, in his own handwriting, the form specified that the policy proceeds were to be paid to the Defendant Grant, who was then Mr. Gayton's fiancee, if she outlived him and, if not, to June Shark, Mr. Gayton's sister. The form was signed by two witnesses. Mr. Gayton printed his name and address on the form and signed it in a space designated for that purpose. The form was received by INS on July 1, 1988.

On September 14, 1990, Mr. Gayton filled out a second standard designation of beneficiary form. Like the first, this form was also prepared in Mr. Gayton's own handwriting and it listed his daughter, Jessica Gayton, and his wife, the Defendant Edyemae Gayton, as the beneficiaries of the policy, with each to take one-half of the proceeds. This form was also signed by two witnesses and Mr. Gayton had again printed his name and address on the form. However, no marking was made in the space set aside for the signature of the insured. Additionally, Mr. Gayton failed to check a box next to the affirmation "I have signed this form in the presence of the two witnesses who have signed below." Despite these deficiencies, the form was sent to INS where it was received on October 12, 1990.

Mr. Gayton died on April 21, 1995. On April 25, Edyemae Gayton filed with the Plaintiff a claim for death benefits under the policy. The Plaintiff denied the claim reasoning that the second designation of beneficiary form was ineffective because Mr. Gayton failed to sign the form in the appropriate space. Ms. Gayton subsequently retained counsel who advised the Plaintiff of his intent to bring suit to recover Ms. Gayton's share of the policy proceeds pursuant to the second designation of beneficiary form. In the interim, the Plaintiff contacted the Defendant Grant concerning her potential entitlement to the insurance benefits. However, Ms. Grant did not file a claim for benefits until more than one year had elapsed after Mr. Gayton's death.

On June 24, 1996, the Plaintiff filed its complaint for declaratory judgment and interpleader (Doc. 1). The Plaintiff requested leave to deposit the policy proceeds in the court registry; that the Court enter a judgment declaring which of the claimants is entitled to the

benefits of the policy; and, upon entry of such a judgment, that the Plaintiff be discharged from any further liability arising out of any conflicting claims to the proceeds of Mr. Gayton's life insurance policy. The litigation progressed in the usual course and all of the Defendants filed motions for summary judgment asserting their respective entitlements to the proceeds of the life insurance policy.

The entry of summary judgment is appropriate only when the court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c). In applying this standard, the court must examine the pleadings, affidavits and other evidence in the record "in the light most favorable to the non-moving party." *Samples on Behalf of Samples v. Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). The moving party bears the initial burden of establishing the nonexistence of a triable fact issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2458, 91 L.Ed.2d 265 (1986). If the movant is successful on this score, the burden of production shifts to the non-moving party who must then come forward with sufficient evidence of each and every element that he or she must prove." *Rollins v. TechSOUTH, Inc.*, 833 F.2d 1525, 1528 (11th Cir. 1987). The non-moving party may not simply rest on the pleadings, but must use affidavits, depositions, answers to interrogatories or other evidence to demonstrate that a material fact issue remains to be tried. *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

The Federal Employees' Group Life Insurance Act (FEGLIA) establishes an order of precedence for determining who is entitled to the proceeds of a policy issued pursuant to the Act. As it pertains to this case, the Act provides that the proceeds of a life insurance policy shall be paid "to the person or persons surviving at the date of [the insured's] death, in the following order of precedence:

> First, to the beneficiary or beneficiaries designated by the employee *in a signed and witnessed writing* received before death in the employing office. . . . For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed *has no force or effect.*

> Second, if there is no designated beneficiary, to the widow or widower of the employee."

5 U.S.C. 8705(a) (1996) (emphasis added). *See also* 5 C.F.R. § 870.902 (1996). The Act also provides that if a person entitled to precedence under the statute fails to file a claim for payment within one year after the death of the insured, payment may be made as if that potential claimant had predeceased the insured. 5 U.S.C. § 8705(b).

The motions for summary judgment raise three issues under these statutory provisions; whether Mr. Gayton's failure to sign the form in the space provided for that purpose renders the second designation of beneficiaries invalid; if so, whether Ms. Grant's failure to file a claim within the one year period precludes her entitlement to the proceeds; and if not, whether the second designation, although invalid, operated to revoke the earlier document naming Ms. Grant as the beneficiary under the policy.

A. The Signed Writing Requirement

The Plaintiff and the Defendant Grant argue that Mr. Gayton's failure to sign the second beneficiary designation form in the space provided, and his failure to check the box affirming that he signed the form before two witnesses, renders the attempted substitution of beneficiaries ineffective. Thus, they claim, the designation of Ms. Grant as the beneficiary remains valid and she is, accordingly, entitled to the the policy funds as a matter of law. The Defendants Gayton and Malone counter this argument by pointing to the following facts: Mr. Gayton printed his name on the form; Mr. Gayton dated the form in a space marked "Date of Execution;" the form was signed by two witnesses in a space marked "Witness to Signature;" and Mr. Gayton sent the form to INS where it was received four and one-half years prior to his death. Given these circumstances, the Defendants Gayton and Malone maintain that appearance of Mr. Gayton's name in print is sufficient to make the form a signed writing within the meaning of § 8705(a).

The statute does not require the use of a standard form to designate a beneficiary. Neither does the statute, nor do the regulations interpreting it, define the word "signed." Further, it appears that there is only one published decision concerning

whether a failure to make any marking on the signature line of a preprinted designation form renders the attempted designation invalid as a matter of law. *Thomas v. Metropolitan Life Ins. Co.*, 921 F.Supp. 810 (D.C. 1996), *affirmed*, 111 F.3d 963 (D.C. Cir. 1997). In *Thomas*, the insured attempted to change the designation of his life insurance beneficiaries using a standard form. The form was filled out in the insured's own handwriting and was subscribed by two witnesses. The insured also check the box affirming that he signed the form in the presence of the witnesses but failed to make any markings on the signature line.

The court held that the absence of any marking in the space set aside for the insured's signature deprived the designation form of any legal effect. *Id.* at 811. Reasoning that Congress intended strict compliance with the beneficiary designation provisions of FEGLIA, the Court concluded that where an insured fails to sign in the space provided on a preprinted form, the insured can not be said to have complied with the signed writing requirement of the statute.[1] *Id.* at 811. The court noted that its approach was particularly appropriate in light of the fact that the insured had, on two prior occasions, signed the standard form in the appropriate space. *Id.* at 812.

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1. The principle that strict compliance with § 8705(a) is required may be considered a reaction to the Ninth Circuit decision in *Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961), *cert. denied*, 368 U.S. 929, 82 S.Ct. 365, 7 L.Ed.2d 192 (1961), in which the court held that a life insurance beneficiary designation in a holographic will was sufficient to entitle the new beneficiary to the policy proceeds. Fearing that *Sears*, if followed, would create severe complications in the administration of FEGLIA policies, the Congress amended the statute to provide that beneficiary designations not executed in the manner provided for by § 8705(a) are of no force and effect. *See Adams v. Macy*, 314 F.Supp. 399, 400-01 (D.Md. 1970).

While the *Thomas* approach is certainly convenient and possesses superficial appeal, it is not persuasive to me.[2] To be sure, FEGLIA requires strict compliance with its beneficiary designation provisions and deviations from those provisions will render an attempted designation invalid. *E.g., Metropolitan Life Ins. Co. v. Sullivan*, 96 F.3d 18, 19-20 (2d Cir. 1996), *cert. denied*, ___ U.S. ___, 117 S.Ct. 972, 136 L.Ed.2d 836 (1997) (beneficiary designation executed by third party acting under power of attorney held invalid); *Ward v. Stratton*, 988 F.2d 65, 67-68 (letter purporting to change beneficiary designation ineffective where it was not witnessed). However, this is not a case in which a claimant requests that partial compliance with the statute be accepted, or that noncompliance be excused. The statute does not define the term "sign." The statute does not require that a standard form be used and filled out according to its terms in order to change a beneficiary designation. In short, there is no specific statutory requirement, with which strict compliance would be required, that Mr. Gayton ran afoul of in failing to sign the designated signature line. The issue in this case, therefore, is whether Mr. Gayton signed the beneficiary designation *at all*.

The Court concludes that a writing is signed as required by FEGLIA when the insured has made some marking on the document which he intends as his signature. The understanding comports with the rules of construction for the United States Code. § 1 U.S.C. § 1 (1985) ("In determining the meaning of any Act of Congress. . . 'signature'. . . includes a mark when the person making the same intended it as such"). In short, *any* mark intended as a person's signature becomes a signature. The fact—if it is a fact—that the mark or writing differs in form or style from the person's usual method of signing his or her name is of no

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2. Interestingly, in its unpublished opinion affirming the district court's entry of summary judgment, the Court of Appeals said: "Assuming arguendo that an insured under a [FEGLI] policy is not required . . . to use the space provided for the signature of the insured, appellants nonetheless failed to prove by a preponderance of the evidence that the insured in this case signed the contested form. . . [T]he evidence as a whole does not support concluding that Thomas intended his name as printed . . . on the contested form to constitute his signature." *Thomas v. Metropolitan Life Ins. Co.*, 1997 WL 159428 (D.C. Cir. 1997).

determinative legal consequence. Of course, such a difference would be an item of evidence to be taken into account in deciding whether the irregular mark or writing was intended as a valid signature (and would usually give rise to a negative inference, perhaps); but the irregularity alone is not conclusive of the issue. Additionally, although the determination of whether the insured intended a specific marking as his signature may be difficult to make in some cases, it does provide a rule with which strict compliance can be required, i.e., if no such marking exists, the insured has failed to strictly comply with the terms of the statute despite any evidence that the insured may have actually intended to designate the beneficiary named in the writing.

It is hornbook law that questions concerning an individual's intent are intensely fact driven and rarely susceptible of disposition by way of summary judgment. The Court is of the opinion that the facts surrounding the execution of the second beneficiary designation form permit conflicting inferences concerning the markings made on the form—specifically Mr. Gayton's printed name—and Mr. Gayton's intent in making them. As such, the motions for summary judgment, as they relate to the question of whether Mr. Gayton signed the form, should be denied.

B. Timely Filing of a Claim for Benefits

The Defendants Gayton and Malone argue that because the Defendant Grant failed to file a claim for benefits under the policy within one year of Mr. Gayton's death, she is time barred from asserting a claim in this action by operation of 5 U.S.C. § 8705(b). That statute provides:

> If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence . . . payment may be made in the order of precedence as if the person had predeceased the employee, and payment bars recovery by any other person.

The argument is without merit and contrary to the unambiguous language of the statute. The statute provides that payment *may* be made to another claimant if a potential claimant entitled to preference has not filed a claim for benefits within a year of the insured's death, not that such payment *must* be made. Further, the

statute makes clear that it is not the passage of a year from the insured's death that bars recovery by a claimant; rather, it is the payment of the proceeds to another claimant which does so.[3] In this case, although one year had elapsed from Mr. Gayton's death before the Defendant Grant filed her claim, the Plaintiff opted to make no payments to either claimant and, instead, to seek a judicial determination of the entitlement to the policy proceeds. Because no payment has been made, Ms. Grant is not time barred from pursuing her claim and Gayton and Malone's motion for summary judgment should be denied to this extent.

C. Cancellation of the First Designation

The Defendants Gayton and Malone next argue that, even if ineffective to designate a new beneficiary, the second designation does operate to cancel the first. The result of this claim, of course, is that Ms. Gayton would take the proceeds as the next claimant in the order of preference.

Again, however, the arugment is contrary to the clear statutory language. 5 U.S.C. § 8705(a) provides that any writing purporting to change a beneficiary designation under a life insurance policy issued pursuant to FEGLIA that is not executed and filed as required by the statute "has no force or effect." 5 U.S.C. § 8705(a).

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3. The authority cited by the Defendants Gayton and Malone is not to the contrary. *See Jacobs v. United States*, 794 F.Supp. 509 (S.D.N.Y. 1992); *Brown v. Wharton*, 756 F.Supp. 223 (E.D.Pa. 1990). Both of these cases involved determinations that a claimanet was time barred from asserting a claim after the insurer had paid the benefits to another claimant and neither decision suggests that the statute would bar recovery absent payment of the proceeds. *Hughes v. Goodwin*, 860 F.Supp. 272 (D.Md. 1994), addressed whether a federal employee had waived life insurance coverage under FEGLIA and is, therefore, inapposite.

The argument made by Gayton and Malone assumes that the second form was not executed as required by the statute and, given that assumption, the statute demands the conclusion that the second designation form was without effect, either in terms of changing the beneficiaries or in terms of cancelling the prior designation.[4] The motion for summary judgment should be denied.

4. Gayton and Malone maintain that the regulations interpreting the statute require that a document changing or cancelling a beneficiary, as opposed to designating one in the first instance, need only be "witnessed and filed," and not signed by the insured as required by the statute. 5 C.F.R. § 870.902(b). They do not dispute, nor could they, that under the statute, taken alone, a signed writing is necessary to cancel a previous beneficiary designation. The argument that the regulation requires something less than the statute merits no serious consideration. The statute would nonetheless trump the regulation as the definitive expression of the will of Congress.

CONCLUSION

At the hearing conducted on the summary judgment motions on May 20, 1997, the parties stipulated that, should the motions for summary judgment be denied, the balance of conveniences weighed heavily in favor of holding the trial of this case in the District of New Jersey and that venue is proper there. Having concluded that this case cannot be appropriately disposed of on the motions for summary judgment, the case will be so transferred pursuant to 28 U.S.C. § 1404(a).

Accordingly, upon due consideration,

(1) the Defendant Grant's motion for summary judgment (Doc. 16) is DENIED.

(2) The Defendants Gayton and Malone's motion for summary judgment (Doc. 28) is DENIED.

(3) This case is hereby TRANSFERRED, pursuant to 28 U.S.C. §1404(a), to the United states District Court for the District of New Jersey. The Clerk is directed to take all steps necessary to effectuate the transfer.

IT IS SO ORDERED.

DONE and ORDERED in Jacksonville, Florida, this 7th day of July, 1997.

/s/ W. Terrell Hodges

UNITED STATES DISTRICT JUDGE

Copy to counsel of record

No. 97-106

Supreme Court, U.S.
FILED
AUG 16 1997
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS,

Petitioners,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY
and DONNA POWELL-THOMAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALVIN PASTERNAK
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Insurance Company
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Of Counsel:

SHERRY S. LAIRD

QUESTIONS PRESENTED

1. Whether the question of the validity of an unsigned beneficiary designation form is an important question of federal law that should be settled by this Court.

2. Whether the District and Circuit Courts' application of the strict compliance standard required by 5 U.S.C. § 8705(a) to a situation in which a federal employee insured under the Federal Employees' Group Life Insurance Policy (the "FEGLI Policy") failed to sign a designation form in the space allotted for such a signature was proper and consistent with Congress' mandate that payment of FEGLI proceeds be made without administrative difficulty and delay.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Supreme Court Rules, as of December 31, 1996, Respondent Metropolitan Life Insurance Company ("MetLife") had no parent companies and, either directly or indirectly, had actual ownership (for its own account) of 10% through 99% of the outstanding voting stock* in each of the following companies:

AEW ADVISORS, INC. (55.19%)
AEW CAPITAL MANAGEMENT, INC. (55.19%)
AEW CAPITAL MANAGEMENT, L.P. (55.19%)
AEW HOTEL INVESTMENT CORPORATION (55.19%)
AEW HOTEL INVESTMENT LIMITED PARTNERSHIP (55.19%)
AEW INVESTMENT GROUP, INC. (55.19%)
AEW REAL ESTATE ADVISORS, INC. (55.19%)
AEW REAL ESTATE ADVISORS, LIMITED PARTNERSHIP (41.39%)
AEW SECURITIES, L.P. (55.19%)
ALDRICH EASTMAN GLOBAL INVESTMENT STRATEGIES, LLC (13.8%)
AURORA LIMITED PARTNERSHIP (0.002%)
BACK BAY ADVISORS, INC. (55.19%)
BACK BAY ADVISORS, L.P. (55.19%)
BBC INVESTMENT ADVISORS, INC. (55.19%)
BBC INVESTMENT ADVISORS, L.P. (55.19%)
BCOP ASSOCIATES L.P. (0.55%)
BLODGETT HOLDINGS, INC. (59.2%)
BRIGGS HOLDINGS, INC. (76.8%)
BRIGGS PLUMBING PRODUCTS, INC. (76.8%)
CAPITAL GROWTH MANAGEMENT LIMITED PARTNERSHIP (27.60%)
CHART HOUSE ENTERPRISES, INC. (17.88%)
CLOVERLEAF PROPERTIES, INC. (59.2%)

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* Does not include real estate joint ventures and partnerships of which MetLife and/or its subsidiaries is an investment partner.

COATING TECHNOLOGIES INTERNATIONAL, INC. (71.8%)
COPLEY MANAGEMENT ADVISORS, L.P. (55.19%)
COPLEY PROPERTIES COMPANY, INC. (55.19%)
COPLEY PROPERTIES COMPANY II, INC. (55.19%)
COPLEY PROPERTIES COMPANY III, INC. (55.19%)
COPLEY PUBLIC PARTNERS HOLDING, L.P. (55.19%)
COPLEY SECURITIES CORPORATION (55.19%)
COPLEY/ORCHARD INVESTORS, INC. (55.19%)
COPLEY/ORCHARD INVESTORS, L.P. (54.09%)
CREA INVESTORS/SANTA FE SPRINGS, INC. (55.19%)
CREA WESTERN INVESTORS I, INC. (55.19%)
CREA WESTERN INVESTORS, L.P. (55.19%)
CTR CORP. (55.19%)
DAN RIVER, INC. (52.8%)
ECLIPSE CLAIM SERVICES INC. (25%)
EIGHTH COPLEY CORP. (55.19%)
FIFTH COPLEY CORP. (55.19%)
FIFTH SINGLETON CORP. (55.19%)
FIRST INCOME CORP. (55.19%)
FOURTH COPLEY CORP. (55.19%)
FOURTH INCOME CORP. (55.19%)
FOURTH SINGLETON CORP. (55.19%)
FRIALATOR INTERNATIONAL, LIMITED (59.2%)
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS (50%)
GRAYSTONE PARTNERS, INC. (55.19%)
GRAYSTONE PARTNERS, L.P. (55.19%)
GS BLODGETT CORPORATION (59.2%)
GS BLODGETT INTERNATIONAL LTD. (59.2%)
HACO CORP. (21%)
HARRIS ASSOCIATES, INC. (55.19%)
HARRIS ASSOCIATES, L.P. (0.18%)
HARRIS ASSOCIATES SECURITIES, L.P. (55.19%)
HARRIS PARTNERS, INC. (0.18%)
HARRIS PARTNERS L.L.C. (0.18%)

INTERBROKER, CORREDURIA DE REASEGUROS, S.A. (25%)
KOLON-MET LIFE INSURANCE COMPANY (51%)
LONE STAR INDUSTRIES, INC. (17.31%)
LOOMIS, SAYLES & COMPANY, INC. (55.19%)
LOOMIS, SAYLES & COMPANY, L.P. (55.19%)
LUTHER'S BAR-B-Q', INC. (39.9%)
MAGIKITCH'N, INC. (59.2%)
MC MANAGEMENT, INC. (55.19%)
MC MANAGEMENT, L.P. (55.19%)
MECCA SOFTWARE, L.L.C. (16.67%)
MERCADIAN CAPITAL L.P. (95%)
MERCADIAN FUNDING L.P. (95%)
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC. (18.4%)
METRIC APARTMENT CO-INVESTMENT TRUST, INC. (15.4%)
METRIC COLORADO, INC. (80%)
METRIC INSTITUTIONAL APARTMENT FUND II, L.P. (16.0%)
METROPOLITAN LLOYDS INSURANCE COMPANY OF TEXAS*
METROPOLITAN STRUCTURES (50%)
MORGUARD INVESTMENTS LIMITED (80%)
NAILITE INTERNATIONAL INC. (23%)
NEF CORPORATION (55.19%)
NEIC HOLDINGS, INC. (55.19%)
NEW ENGLAND FUNDS, L.P. (55.19%)
NEW ENGLAND FUNDS MANAGEMENT, L.P. (55.19%)
NEW ENGLAND INVESTMENT ASSOCIATES, INC. (55.19%)
NEW ENGLAND INVESTMENT COMPANIES, L.P. (55.19%)
ORIGENES AFJP S.A. (10%)
PERSEUS PARTNERS L.P. (0.002%)
PESCO PLUS, L.C. (50%)

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* Affiliate

PITCO FRIALATOR, INC. (59.2%)
PLEIADES PARTNERS L.P. (0.002%)
PUBLIC EMPLOYEES EQUITIES SERVICES COMPANY (50%)
R&T ASSET MANAGEMENT, INC. (55.19%)
REICH & TANG ASSET MANAGEMENT, INC. (55.19%)
REICH & TANG ASSET MANAGEMENT, L.P. (55.19%)
REICH & TANG DISTRIBUTORS, L.P. (55.19%)
REICH & TANG SERVICES, L.P. (55.19%)
SANTANDER MET, S.A. (50%)
SECOND INCOME CORP. (55.19%)
SEVENTH COPLEY CORP. (55.19%)
SIXTH COPLEY CORP. (55.19%)
SIXTH SINGLETON CORP. (55.19%)
SEGUROS GENESIS, S.A. (MEXICO) (24.5%)
SEGUROS GENESIS, S.A. (SPAIN) (50%)
SPA PARTNERS L.P. (0.002%)
STATE STREET RESEARCH INTERMEDIATE BOND FUND*
STATE STREET RESEARCH INTERNATIONAL FIXED INCOME FUND*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: AGGRESSIVE*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: CONSERVATIVE*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: MODERATE*
STELLAR PARTNERS L.P. (0.002%)
THIRD INCOME CORPORATION (55.19%)
THIRD SINGLETON CORPORATION (55.19%)
VAUGHAN, NELSON, SCARBOROUGH & MCCONNELL, L.P. (55.19%)
VNSM, INC. (55.19%)
WESTPEAK INVESTMENT ADVISORS, INC. (55.19%)
VESTPEAK INVESTMENT ADVISORS, L.P. (55.19%)

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* Mutual fund

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 97-106

MARY THOMAS and IVY THOMAS,

Petitioners,

—against—

METROPOLITAN LIFE INSURANCE COMPANY
and DONNA POWELL-THOMAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the judgment of the United States Court of Appeals For the District of Columbia Circuit.

STATEMENT OF THE CASE

This is a case in which two people are claiming the proceeds of coverage, payable under the FEGLI Policy, pursuant

to a beneficiary designation form that was not signed by the insured. Applying the strict compliance standard that has long been used to determine the validity of beneficiary designations under the FEGLI Policy, both the United States District Court For the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit ruled that the unsigned form was invalid as a designation of beneficiary.

As an employee of the District of Columbia Lottery and Charitable Games Control Board, Gerald C. Thomas (the "Insured") was covered under the FEGLI Policy, issued by MetLife to the Civil Service Commission pursuant to 5 U.S.C. §§ 8701-8716 (1996) (the Federal Employees' Group Life Insurance Act, hereinafter referred to as the "FEGLI statute" or "FEGLIA").[1] The Civil Service Commission is the predecessor of the current policyholder, the United States Office of Personnel Management ("OPM"). MetLife is responsible for the administration of claims brought under the FEGLI Policy.

The Insured died on February 2, 1994, and proceeds of his FEGLI coverage in the amount of $197,000 (the "Proceeds") became payable. After the Insured's death, MetLife reviewed the documents that were necessary to determine how the Proceeds should be disbursed in accordance with the provisions of FEGLIA and the FEGLI regulations promulgated thereunder.

Section 5 U.S.C. § 8705(a) sets forth an order of precedence which determines the order in which FEGLI proceeds are to be paid. The first in line under the order of precedence is the designated beneficiary. Section 5 U.S.C. § 8705(a) provides that, in order to be valid, a beneficiary designation must meet four requirements. The designation must be: "a [1] signed and [2] witnessed [3] writing [4] received before death

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[1] The FEGLI Policy is governed by the FEGLI statute and the regulations promulgated thereunder at 5 C.F.R. Parts 870-874 (1997).

in the employing office. . . ."[2] The same section also provides that: "For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect."

Three beneficiary designation forms were submitted by the Insured's employing agency to MetLife (Ra.1 to Ra. 3),[3] the validity of the first two of which has never been questioned. By pre-printed Designation of Beneficiary forms dated August 21, 1989 and April 7, 1993 (Ra. 3 and Ra 2, respectively), the Insured had designated his wife, plaintiff-intervenor, Donna M. Powell-Thomas, to receive 100% of the Proceeds.

The most recent of the designations, however, appears on its face to be invalid because it fails to meet one of the four requirements for validity under FEGLIA. The beneficiary designation form, dated October 13, 1993 (the "October 13, 1993 Form"), is a pre-printed OPM form, with the words "Designation of Beneficiary" printed at the top. Ra. 1.

(1) The spaces of the October 13, 1993 Form calling for employee information, beneficiary information, and the name and address of the Insured are all filled in, in block printing.

(2) The October 13, 1993 Form bears the signatures of Carolyn Osbourne and Deborah Iverson in the spaces labelled "Signature of Witness."

(3) The October 13, 1993 Form was received prior to the Insured's death by his employing agency. The spaces labelled

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[2] Similarly, the FEGLI regulations, at 5 C.F.R. § 870.902, provide:

> (a) A designation of beneficiary shall be in writing, *signed*, and witnessed by two people, and received in the employing office . . . before the death of the insured.

(emphasis added).

[3] All "Ra.___" references are to the Appendix filed by MetLife with this Brief in Opposition.

"Receiving Agency," "Date of Receipt," "Agency Signature," and "Title," are filled in with information indicating that the October 13, 1993 Form was received by Carolyn Osbourne, a Personnel Management Specialist with the D.C. Lottery Board on October 13, 1993.

(4) The October 13, 1993 Form is not signed by the Insured. The space on the October 13, 1993 Form labelled "Signature of Insured" is completely blank and nowhere else on the October 13, 1993 Form does the Insured's signature appear.

The Insured's mother, Mary Thomas, and the Insured's sister, Ivy Thomas, (hereinafter "Petitioners") were designated on the October 13, 1993 Form to receive, respectively, 35% and 65% of the Proceeds. They argue that, even though the Insured failed to place his signature in the space on the form labeled "Signature of Insured," he nevertheless signed the form by printing his name on the form and checking off the box on the form that states: "I have signed this form in the presence of two witnesses who have signed below." P. 12.[4]

The October 13, 1993 Form provides, in pertinent part:

> If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect.

The Insured's wife, Donna Powell-Thomas (hereinafter "Powell-Thomas"), also made a claim to the Proceeds. Arguing that the October 13, 1993 Form was invalid because it had not been signed by the Insured, she based her claim on the next prior valid designation form, the April 7, 1993 Designation Form, which named her to receive 100% of the Proceeds.

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[4] All "P.___" references made herein are to pages of the Petition for Writ of Certiorari submitted by Petitioners to this Court.

When the adverse claimants were unable to reach an agreement as to the disbursement of the Proceeds, Petitioners commenced an action in the United States District Court for the District of Columbia and, thereafter, made a motion for summary judgment. Powell-Thomas made a motion for Declaratory Judgment that was treated by the District Court as a motion for summary judgment. P. 8a, n.1.

The District Court rejected Petitioners' argument that other markings admittedly made by the Insured on the October 13, 1993 Form constituted a signature and held that, because the October 13, 1993 Form was not signed by the Insured, it did not meet the requirements of FEGLIA and was, therefore, invalid. The Court held that the Proceeds were payable to Powell-Thomas. P. 9a and 10a.

Petitioners appealed the decision of the District Court to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals affirmed the decision of the District Court. P. 5a and 6a.

Petitioners petitioned the Court of Appeals for Rehearing and *En Banc* Consideration. Two of the three judges who had decided the case (Sentelle and Henderson, *Circuit Judges*) agreed to deny the motion for rehearing, and a panel of judges consisting of Edwards, *Chief Judge*, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers and Tatel, *Circuit Judges* denied the suggestion for rehearing *en banc*.

REASONS THE PETITION SHOULD BE DENIED

Rule 10 of the Supreme Court permits the discretionary writ of *certiorari* to be granted "only for compelling reasons." Rule 10 further states:

> The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of *another United States court of appeals* on the same *important* matter . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> * * *
>
> (c) a state court or a United States court of appeals has *decided an important question of federal law* that has not been, but should be, settled by this Court, or has decided *an important federal question* in a way that conflicts with relevant decisions of this Court.

(Emphasis added.)

Petitioners have failed to demonstrate that compelling reasons for the granting of *certiorari* exist in this case or that the case involves a conflict between the decisions of two United States courts of appeal or that the case involves an important federal question calling for an exercise of this Court's supervisory power.

Furthermore, both the District Court and the Court of Appeals decided the case in a manner comporting with the plain meaning of the FEGLI statute, the applicable federal caselaw, and the underlying policy considerations with which Congress was concerned when it enacted the FEGLI statute.

A. THE QUESTION OF THE VALIDITY OF AN UNSIGNED BENEFICIARY DESIGNATION FORM IS NOT AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT

This is a case of first impression, but *not* one of great significance as is argued by Petitioners. P. 6. While it is true that there are 2.5 million active employees of the federal

government and 1.5 million retired employees of the federal government covered under the FEGLI Policy, a very small number of those employees is affected by the kind of situation presented by the instant case. This case involves a beneficiary designation form that was filled out in the insured's own hand; two witnesses who signed the form attesting to the "fact" that the insured signed his name in front of them, even though it is clear that he did no such thing; an erroneous acceptance of the unsigned form by the insured's employing agency; and adverse claimants who have decided to fight over the Proceeds for three and a half years rather than to come to an agreement among themselves as to a reasonable split of the Proceeds. This particular set of circumstances does not occur on anything close to a regular basis and, therefore, cannot be presented reasonably as a set of circumstances that has any effect whatsoever on the vast majority of people covered under the FEGLI Policy.

Petitioners state that what is at issue in this case is "the proper method for designating beneficiaries of a Federal Government Group Life Insurance Policy," (P. 6) and seek to inflate the importance of this particular case by arguing that "millions of federal employees and retirees are entitled to guidance and clarification of the procedures utilized to carry out their intentions to change beneficiaries as their life circumstances dictate." P. 8. Contrary to what Petitioners seem to believe, the proper method for designating beneficiaries is clearly set forth in the FEGLI statute and regulations. In addition, one need only to look at the October 13, 1993 Form to see that a signature was required. And the District Court and Court of Appeals needed only to look at the October 13, 1993 Form to see that the signature requirement was not met.

Contrary to the argument made by Petitioners (at P. 8), the decisions of the District Court and the Court of Appeals did nothing to limit the right of an insured to name a beneficiary. The decisions merely re-clarified what had been clear before to everyone but Petitioners: when a FEGLI insured chooses to

use the standard beneficiary designation form, the effect of his failure to sign the form in the designated area cannot be overcome by his completion of the rest of the form in his own handwriting or by his checking off a box that indicates he has signed the form, or by the signatures of witnesses attesting to a signature that is, simply, not there.

B. THE DISTRICT AND CIRCUIT COURTS' APPLICATION OF THE STRICT COMPLIANCE STANDARD REQUIRED BY 5 U.S.C. § 8705(a) TO THE INSTANT CASE WAS PROPER AND CONSISTENT WITH CONGRESS' MANDATE THAT PAYMENT OF FEGLI PROCEEDS BE MADE WITHOUT ADMINISTRATIVE DIFFICULTY AND DELAY

The only distortion of underlying policy considerations (P. 13) has been made by Petitioners, not by either the District Court or the Court of Appeals. In pointing out that "Courts have consistently held that FEGLIA requires strict compliance with its provisions" (P. 9a), the District Court cited *Adams v. Macy*, 314 F. Supp. 399 (D. Md. 1970), which contains a detailed discussion of the policy considerations underlying Congress' 1966 amendment of 5 U.S.C. § 8705(a):

> Section 8705(a) was amended in 1966 by adding
>
> > For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.
>
> In a case decided before the amendment, a court decided that [a] designation of beneficiary in a holographic will was sufficient to entitled [sic] the designee to the life insurance proceeds. *Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961).
>
> The amendment was passed for the purpose of avoiding the *Sears* result. The reason for the amendment is explained in a Senate report:

> The equities in Sears may have prompted the court of appeals to disregard the civil service regulation and the general intent of the statute in order to comply with the insured's wishes, but the precedent established in that case could, if generally followed, result in administrative difficulties for the Civil Service Commission and the insurance companies and, more important, seriously delay paying insurance benefits to survivors of Federal employees.

Id. at 400. According to the court in *Adams v. Macy*, the amendment was made by Congress:

> not to change the beneficiary designation provisions but to clarify Congress' intention that a *literal compliance with statutory procedure is absolutely necessary* in order for a federal employee to change the beneficiary of his group insurance policy.

Id. at 401 (emphasis added).[5]

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[5] Petitioners' interpretation of the purpose behind the 1966 amendment to 5 U.S.C. § 8705(a) is strained and not in keeping with Congress' own explanation. There is nothing in the amendment to suggest that it applies only to invalidate an "extraneous document not received in the employing office before an insured's death." P. 9. First, the amendment states that any designation, change or cancellation of beneficiary in a will *or other document* not so *executed* and filed is without effect. From the words themselves, it is clear the amendment deals not only with the requirement of receipt before death but also with the other requirements set forth in § 8705(a), including the requirement that the designation be signed by the insured.

Petitioners' quote from *Fair v. Moore*, 397 A.2d 976 (D.C. App. 1979) at P. 9 suggests that the 1966 amendment has been held to have been enacted solely for the purpose of requiring official receipt of a designation. Since the issue in *Fair v. Moore* was whether a designation form had been properly received prior to the death of the insured, the court naturally focused on the part of the amendment that dealt with receipt. However, as noted above, the amendment deals with more than the issue of receipt.

Congress made the requirements for a valid beneficiary designation more stringent in order to prevent administrative difficulties and delay in making payments of FEGLI proceeds. The kind of fact-finding inquiry and individual analysis Petitioners suggest is necessary in a case such as this one would result in serious administrative difficulties and delay. Petitioners' line of reasoning and that of the Court in *Metropolitan* v. *Grant*, Case Number 96-136-CIV-OC-10 (P.13-15 and P. 17a-25a) suggests that, in every case in which a pre-printed form has been filled in but not signed by the insured, it will be necessary to (1) conduct a fact-finding inquiry to ascertain whether *any* of the marks on the form were placed there by the insured and (2) analyze the making of those other marks on the form to determine whether, in that particular case, the common sense definition of "signature" can somehow be stretched to include those other marks.

If this Court adopts the theory espoused by Petitioners and the *Grant* Court about the analysis necessary in a case such as this one, insurance companies ultimately will be forced to litigate every case involving an insured who has, himself, chosen to use a particular form on which to designate a beneficiary and then has failed to sign that form in the place clearly labelled for such purpose.

One has only to examine the course of proceedings in the instant case to conclude that litigating this sort of matter causes serious delays in payment of FEGLI proceeds. It has already been more than three and a half years since the Insured's death, and still the Proceeds cannot be paid out.

Petitioners argue that "due process necessitates that [the Petitioners] have an opportunity to demonstrate the [Insured]'s purpose and intent in preparing the [October 13, 1993 Form]" (P. 11) and complain that "the decisions of the District Court and the Court of Appeals in this case were delivered without the parties having the opportunity for face to face discourse." (P.15.) These are odd arguments consid-

ering Petitioners themselves indicated, by making a motion for summary judgment in the District Court, that the case did not involve questions of fact. The only reason they argue now that there are questions of fact to be determined is that the District Court, while agreeing that the case was ripe for summary judgment, did not rule in favor of *their* motion for summary judgment, finding Powell-Thomas's summary judgment arguments more compelling.

The Court of Appeals has already addressed Petitioners' incorrect construction of that Court's holding as an implication that Petitioners were entitled to a trial. P. 7. In its Order denying Petitioners' petition for rehearing, the Court of Appeals stated:

> The court wishes to clarify, however, that although it may appear from the judgment filed February 24, 1997, that the court weighed the evidence and decided the disputed issue, this court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have had the burden at trial of establishing that fact . . . Further, "[t]he [Supreme] Court has said that summary judgment should be granted where the evidence is such that it would require a directed verdict for the moving party." This is such a case. The court thus determined that there are no genuinely disputed issues of material fact.

(Citations omitted.) P. 1a and 2a.

Petitioners argue that the decisions of the District Court and the Court of Appeals do not contain an analysis of the relevant law interpreting the words "signed" or "signature." The cases cited by Petitioners as relevant at P. 10 and 11-12 were

cited by Petitioners in their memorandum to the Court of Appeals, though, so they were before that Court when it made its decision. It is not surprising that the decisions of both Courts omitted any discussion of the cases cited by Petitioners at P. 10 and11-12 as they are all significantly distinguishable from the case at bar.

U.S. v. Wexler, 657 F. Supp. 966 (E.D. Pa. 1987), *rev'd on other grounds*, 838 F.2d 88 (3rd Cir. 1988)(cited at P. 11-12) involved the question of validity of a *stamped signature* of a Department of Motor Vehicles official on vehicle registration certificates issued by the DMV. *Carna v. Bessemer Cement Co.*, 558 F. Supp. 706 (W.D. Pa. 1983)(cited at P. 12) involved bills of lading containing, similar to the October 13, 1993 Form, a space labeled "Signature of Consignor." Unlike the instant case, where the signature space was left completely blank, the signature space on the form in *Carna* contained the printed name of the Consignor, which the court properly held to be a signature.

State v. Schell, 224 N.E.2d 49 (Ind. 1967) (cited at P.12) involved a hyper-technical argument, rejected by the court, that the failure of a grand jury indictment to have the words "a true bill" written in the handwriting, rather than the printing, of the grand jury foreman rendered an indictment defective.

Plemens v. Didde-Glaser, Inc., 224 A.2d 464 (Md. 1966) (cited at P. 12) involved the question of whether the signature of the president of a company on a financing statement bound that company to the terms and conditions set forth on the statement. *Plemens* is clearly distinguishable from the case at bar since, in the opinion itself, the court states: "Nor is this a case of the lack of a typed, printed, stamped, or written 'signature' of the secured party or the debtor." *Id.* at 467.

Ex parte Cardoza, 109 A. 93 (Md. 1919)(cited at P. 10) involved a *handwritten* will, rather than a pre-printed form on

which there was a space clearly allocated for the testator's signature.

In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972)(cited at P. 10) is closer, factually, to the instant case than any of the other cases cited by Petitioners. *Hall* involved the question of whether a will that was missing the last page, upon which the testator had placed her signature, could nevertheless be considered valid on the basis of the fact that the testator had written her name at the top of the first page of the will in the following manner: "I, Francesca Ross Hall, . . ." Like Petitioners herein, the plaintiffs in the *Hall* case argued that the testator meant to be bound by her "signature" at the beginning of the will, even though that signature merely identified the testator as maker of the document. The court in *Hall* refused to accept the first signature as a valid testamentary signature because it was clear from the testimony of the witnesses that the signature on the last (missing) page of the will was the one that actually authenticated the document.

Similarly, the District Court in the instant case refused to accept Petitioners' argument that the Insured signed the October 13, 1993 Form by printing his name in a place on the form that clearly and simply called for a printed or typed identification of the Insured, while failing to sign his name in a place on the form that clearly called for his signature.

Reidy v. Almich, 418 P.2d 390 (Ariz. Ct. App. 1966) (cited at P. 10) involved a bank account signature card, used to establish a totten trust account, that was signed in the appropriate place on one side but not signed on the reverse side. The reverse side contained the actual trust agreement. Holding that a totten trust account had been established properly, the court noted that, according to the employee of the bank who had accepted the signature card, it was not customary, at the time the transaction took place, for the reverse side of the signature card to be completed. In addition, the court noted

that the face of the "signature card specifically adopted by reference the trust agreement on the reverse side thereof." *Id.* at 393.

Petitioners' reliance on *Reidy* is flawed for a very important reason. Unlike the situation presented in *Reidy*, the evidence before the District Court in the instant matter demonstrated that, although the unsigned October 13, 1993 Form was received by the Insured's employing agency, such receipt was *not* in keeping with the government's policies and procedures and was, in fact, a mistake.

The District Court had before it the affidavit of Carolyn V. Osbourne who signed the October 13, 1993 Form not only as a witness but also as a representative of the receiving employing agency. In her affidavit, Ms. Osbourne states: "There is a box on the form with the notation 'Signature of Insured.' I did not notice at that time that Mr. Thomas did not sign his name in that box. It was only after his death that I became aware that the box had not been filled in." The clear implication of this sworn statement is that, had Ms. Osbourne noticed that the Insured had not signed the October 13, 1993 Form, she would *not* have accepted it as a validly completed form.[6]

Not one of the cases relied upon by Petitioners involved the situation or question presented by the case at bar - whether, on a pre-printed form, the printing of a name in the space calling for the name to be printed can be considered a signature when the space calling for the name to be signed has been left completely blank. And not one of the cases relied upon by Petitioners dealt with the situation presented herein—the

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[6] Petitioners claim that "[t]he two (2) witnesses believed the form had been signed, as evidenced by the Affidavits submitted with Petitioner's Motion for Summary Judgment and Request for Hearing in the District Court." P. 12. That statement is patently untrue. Nowhere in the affidavits of the "witnesses" do they state that they believed the form had been signed. On the contrary, both state that they did not realize until after his death that the Insured had failed to sign his name in the signature box on the October 13, 1993 Form.

absence of a signature on a form identical to previous forms that were signed by the Insured, in the space allotted for that purpose, in the following manner: full name, hand-written, in cursive.

CONCLUSION

This case does not present a question of federal law affecting all federal employees and retirees. It presents a question, already adequately determined by the District Court and the Court of Appeals in accordance with well-settled law, that affects a small number of federal employees and retirees who are not careful enough to fill out forms properly.

Both the District Court and the Court of Appeals recognized that Congress' mandate that 5 U.S.C. § 8705(a) be strictly complied with demands the satisfaction of each and every one of the four statutory requirements for validity of a beneficiary designation—not just some of those requirements. Both Courts also recognized that neither the Insured's printing of information where printing was called for nor the erroneous acceptance by the government of the October 13, 1993 Form could transform the unsigned form into a signed form.

In making their decisions, both the District Court and the Court of Appeals acted in accordance with Congress' mandate and the *applicable* federal law regarding the issue of strict compliance, and both Courts kept in mind Congress' underlying policy considerations of preventing administrative difficulties and delay in making payments of FEGLI proceeds. For all of the foregoing reasons, the Petition should be denied.

Dated: New York, New York
August 18, 1997

Respectfully submitted,

ALVIN PASTERNAK
Attorney for Respondent
Metropolitan Life
Insurance Company
One Madison Avenue
New York, New York 10010
(212) 578-3735

Of Counsel:

SHERRY S. LAIRD

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FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-76-3937

Place an "X" in the appropriate box below:

	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits
X					

If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY BOARD		PROCUREMENT	2101 MLKING AVE SE WASH DC 20020

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "I" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address (Including ZIP Code) of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
MARY M. THOMAS	5830 EASTERN AVE NE WASH. DC 20011	MOTHER	35%
IVY DOTSON	SAME	SISTER	65%

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS (Including ZIP Code) OF INSURED

GERALD C. THOMAS JR
5830 EASTERN AVE NE
WASHINGTON DC 20011

Date of Execution (Month, Day, Year)
10-13-93

Please check:

- ☑ I have signed this form in the presence of the two witnesses who have signed below.
- ☑ Neither witness is named as a beneficiary.
- ☑ If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Signature of Insured

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Carolyn L. Osborne	2101 M.L. King Jr. Ave S.E.	Wash D.C. 20020
Signature of Witness	Number and Street	City, State and ZIP Code
Deborah P. Iverson	2101 MLK Jr Ave SE	Wash DC 20020

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	10-13-93	Carolyn L. Osborne	Personnel Mgmt Spec.

SEE REVERSE SIDE OF DUPLICATE COPY FOR INSTRUCTIONS ON WHERE TO FILE THESE FORMS.
DO NOT FILE WITH THE OFFICE OF FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

BEST AVAILABLE COPY

FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-78-3937

Place an "X" in the appropriate box below:

X	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits

If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY BOARD		ADMINISTRATION DIVISION	WASH. DC 20020 2101 MARTIN LUTHER KING AVE SE

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "f" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address *(Including ZIP Code)* of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
DONNA M POWELL-THOMAS	11417 CEDAR LN BELTSVILLE MD 20705	WIFE	100%

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS *(Including ZIP Code)* OF INSURED

GERALD CHARLES THOMAS JR
11417 CEDAR LN
BELTSVILLE MD 20705

Please check:

- [X] I have signed this form in the presence of the two witnesses who have signed below.
- [ ] Neither witness is named as a beneficiary.
- [ ] If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Date of Execution *(Month, Day, Year)*: 04-07-93

Signature of Insured: Gerald Charles Thomas Jr.

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Gloria A Cantey	218 P ST. NW	Washington DC 20001
Ida L Crosson	514 Varnum St. NW	WASH. DC 20011

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	04/07/93	Carolyn G. Bourne	Personnel Mgmt. Spec.

SEE REVERSE SIDE OF DUPLICATE COPY FOR INSTRUCTIONS ON WHERE TO FILE THESE FORMS.
DO NOT FILE WITH THE OFFICE OF FEDERAL EMPLOYEES' GROUP LIFE INSURANCE.

1-50-800-000

FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-78-3937

Place an "X" in the appropriate box below:

						If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.
X	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits	

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY	DC GOVT	ADMINISTRATION	WASH. DC 2001 2101 MLK AVE SE 20020

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "I" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address *(Including ZIP Code)* of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
DONNA MARIA POWELL-THOMAS	221 PEABODY ST NW, WASH. DC 20001	WIFE	ALL (100%)

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS *(Including ZIP Code)* OF INSURED

Please check:

- [x] I have signed this form in the presence of the two witnesses who have signed below.
- [x] Neither witness is named as a beneficiary.
- [ ] If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Date of Execution *(Month, Day, Year)*	Signature of Insured
8/21/89	Gerald Charles Thomas Jr.

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Thomas Conley	2101 MLK Jr. Ave SE	Washington D.C. 20020
Agnes V. Brown	2101 MLK Jr. Ave. S.E.	Washington, D.C. 20020

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	08-22-8	Gerald D. Perry	Employee Relations Spec.

SEE REVERSE SIDE OF DUPLICATE COPY FOR INSTRUCTIONS ON WHERE TO FILE THESE FORMS.
DO NOT FILE WITH THE OFFICE OF FEDERAL EMPLOYEES' GROUP LIFE INSURANCE.

Supreme Court, U.S.
FILED
AUG 15 1997
CLERK

No. 97-106

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY THOMAS and IVY THOMAS,
Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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30 pp

QUESTIONS PRESENTED

1. Whether the District Court properly applied the "strict compliance" standard under 5 U.S.C. Section 8705(a) where the insured, who on two separate occasions previously completed and signed his name on the beneficiary designation forms in the box marked "Signature of Insured," naming Respondent Donna Powell-Thomas as the beneficiary, subsequently prepared a third beneficiary designation form naming Petitioners as the beneficiaries and did not sign the box marked "Signature of Insured."

2. Is there a compelling reason for this Court to grant the petition for writ of certiorari, where the Petitioners failed to prove by a preponderance of the evidence that the insured signed the contested form?

3. Should this Court grant the petition for writ of certiorari to allow Petitioners to demonstrate that the insured intended to sign the contested designation of beneficiary form when they failed to conduct discovery and develop the record below.

PARTIES TO THE PROCEEDING

Petitioners, Mary Thomas and Ivy Thomas a/k/a Ivy Dotson were the Plaintiffs in the United States District Court and Appellants in the United States Court of Appeals. Respondent Metropolitan Life Insurance Company was a Defendant in the District Court and Appellee in the Court of Appeals. Respondent Donna Powell-Thomas was a Plaintiff/Intervenor in the District Court and Appellee in the Court of Appeals. Stewart Funeral Home, Inc. was joined as a Plaintiff in the District Court. Stewart Funeral Home, Inc., has not actively participated in the proceedings.

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No. 97-106

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY THOMAS and IVY THOMAS,
Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, Donna Powell-Thomas respectfully requests that Petitioners' request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia entered on February 24, 1997, be DENIED.

OPINIONS BELOW

The Order of the District Court is reported at 921 F. Supp. 810 (D.C. 1996). The Judgment of the Court of Appeals is reported at 111 F.3d 963 (D.C. Cir. 1997). The Court of Appeals' Orders denying the Petition for Rehearing and Suggestion for Rehearing en Banc are not reported. However, complete copies have been included in Appendix A through Appendix B of the Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on February 24, 1997. A Petition for Rehearing and a Suggestion en Banc, was filed on March 25, 1997, and denied on June 11, 1997. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1) (1994).

LEGAL PROVISIONS INVOLVED IN THIS CASE

Federal Employee's Group Life Insurance Act ("FEGLIA"), 5 U.S.C. Section 8705(a) (1994).

COUNTER-STATEMENT OF CASE

Decedent Gerald C. Thomas, Jr. was employed by the District of Columbia Lottery and Charitable Games Control Board ("Board") at the time of his death on February 2, 1994. Employees of the Board, including Decedent, were entitled to participate in the Federal Employees Group Life Insurance ("FEGLI") program, which was managed by Metropolitan Life Insurance Company ("MetLife"). Decedent's policy benefits amounted to One Hundred Ninety-Seven Thousand Dollars ($197,000.00).

On August 21, 1989, and April 7, 1993, Decedent completed two (2) Designation of Beneficiary forms naming Respondent Donna Powell-Thomas as the sole beneficiary of 100% of his death benefits. Both Designation of Beneficiary forms were fully completed and properly executed by Decedent with Decedent signing his name in cursive in the box on the forms -- Signature of Insured, witnessed, and received in the appropriate office prior to Decedent's death. Despite the fact that Respondent had initiated divorce proceedings, Respondent was Decedent's wife at the time of his death.

On October 13, 1993, Decedent purportedly filled out a third Designation of Beneficiary form in which Petitioners Mary and Ivy Thomas were listed as the beneficiaries of his FEGLI policy proceeds. The form contains Decedent's name and address. It is undisputed that the Decedent did not sign the Designation of Beneficiary form in the space marked "Signature of Insured" as required -- this area was left blank. The only markings on the form which appear to be signatures are those contained under the spaces marked "Signature of Witness[es]". There is no evidence in the record by the individuals who allegedly signed as witnesses that they

observed Decedent "sign" the form. In several places, the form instructs the policy holder that it must be signed. Specifically, the instructions on the back of the form state that "[a]ll entries on the form ***except signatures*** should be typed or printed in ink (typewriting preferred)." (Emphasis added).

After Decedent's death, Petitioners and Respondent Powell-Thomas filed claims for the insurance proceeds. Thereafter, on August 31, 1994, Petitioners filed a Complaint in the United States District Court for the District of Columbia to collect the insurance proceeds pursuant to the purported Designation of Beneficiary dated October 13, 1993. Respondent Donna Powell-Thomas subsequently moved to and was granted leave to intervene in the suit. Respondent Powell-Thomas filed a Motion for Declaratory Judgment on December 19, 1994, based on Decedent's properly executed Designation of Beneficiary form dated April 7, 1993.

Pursuant to 28 U.S.C. Section 1335 and Rule 67 of the Federal Rules of Civil Procedure, Respondent MetLife deposited the policy proceeds into the Registry of the District Court. Upon the Motion of MetLife, Stewart Funeral Home was added as a party Plaintiff, but has not otherwise participated in this case.

After fully considering all positions, the District Court entered an Order on January 2, 1996, denying Petitioners' Motion for Summary Judgment and Request for Hearing, and granting Respondent Powell-Thomas' Motion for Declaratory Judgment (treated by the Court as a Motion for Summary Judgment). In its opinion, the District Court, relying on prior case law requiring "strict compliance" with FEGLIA, ruled that "the decedent's acts of printing his name and checking

the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute." (A. 8a)

The Petitioners, relying upon 28 U.S.C. Section 1291, appealed to the United States Court of Appeals for the District of Columbia Circuit on January 29, 1996. The Court of Appeals affirmed the District Court's grant of Summary Judgment to Respondent Donna Powell-Thomas. In its judgment, the Court of Appeals stated that "[g]iven that the insured signed his name by writing it in cursive on three of four designation of beneficiary forms in evidence . . . the evidence as a whole does not support concluding that Thomas intended his name . . . to constitute his signature." (A. 1a) Accordingly, the panel determined an opinion was not needed, and entered its per curiam order on February 24, 1997.

On March 25, 1997, Petitioners submitted a Petition for Rehearing and Suggestion for Rehearing en Banc to the United States Court of Appeals. After full consideration, the United States Court of Appeals for the District of Columbia Circuit denied both the Petition for Rehearing and Suggestion for Rehearing En Banc. In its judgment, the Court stated in pertinent part that:

> "[T]his court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have the burden at trial of establishing that fact."

(A. 3a) Accordingly, the panel determined that "there [were] no genuinely disputed issues of material fact," and entered its per curiam judgment on June 11, 1997.

I. REASONS FOR DENYING THE PETITION THE FEDERAL EMPLOYEES GROUP LIFE INSURANCE ACT, 5 U.S.C. § 8705(a), REQUIRES STRICT COMPLIANCE WITH ITS PROVISIONS.

The trial court found that the form at issue dated October 13, 1993 had not been signed by Decedent. The lower court followed the law that FEGLIA requires "strict compliance" with its provisions. See Ward v. Stratton, 988 F.2d 65, 67 (8th Cir. 1993); Adams v. Macy, 314 F.Supp. 399, 401 (D.Md. 1970); Metropolitan Life Ins. Co. v. Trainor, 754 P.2d 427, 428 (Colo. Ct. App. 1988); Burleson v. Burleson, 277 A.2d 647, 648 (D.C. 1971). In summary, the Petition for writ of certiorari should be denied because Petitioners submitted no evidence that the Decedent signed or even intended to sign the October 13, 1993, form when he printed his name in the informational entries.

In an effort "to provide low cost group life insurance to Federal employees," Congress established the Federal Employee's Group Life Insurance Act ("FEGLIA") in 1954. H.R. 2579, 83d Cong., 2d Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 3052. According to the statute, FEGLI proceeds are to be paid: "First, to the beneficiary or beneficiaries designated by the employee in a ***signed and witnessed*** writing received before death in the employing office." 5 U.S.C. § 8705(a). (Emphasis added.) In 1966, Congress amended FEGLIA to include language that "a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or

effect." Id. This language was added after the ninth circuit court held that a beneficiary designated in a will which had not been executed or filed in accordance with FEGLIA was valid. See S. Rep. No. 1064, 89th Cong., 2d Sess. (1966), reprinted in 2 U.S.C.C.A.N. 2070, 2071; see Sears v. Austin, 292 F.2d 690 (9th Cir. 1961), cert. denied, 368 U.S. 929 (1961). Congress amended FEGLIA to make clear that the statute is to be strictly construed and that "the order of precedence . . . shall prevail over any extraneous document designating a beneficiary." Id.; O'Neal v. Gonzalez, 839 F.2d 1437, 1440 (11th Cir. 1988). Hence, the case at bar turns on whether, vel non, Decedent signed the October 13, 1993 Form in accordance with FEGLIA.

Congress has forcefully and clearly identified to whom and how FEGLI benefits are to be paid. For reasons of administrative convenience, Congress established an inflexible rule that a beneficiary must be named strictly in accordance with the statute, irrespective of the equities in the case; Metropolitan Life Ins. Co. v. Manning, 568 F.2d 922, 926 (2d Cir. 1977). Congress created no exceptions to its statutory scheme, and "courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365, 376 (1990), remanded, 10 F.3d 700 (10th Cir. 1993). Congress' general intent in enacting FEGLIA was to avoid administrative difficulties for the government and insurance companies, and more importantly, to avoid delay in paying benefits to the survivors. Id. S. Rep. No. 1064 at 2071; Metropolitan Life Ins. Co. v. Christ, 979 F.2d 575, 578-79 (7th Cir. 1992) (Congress has reacted promptly to foreclose any T equities in the statute interpreted by federal courts in order to further federal interests of administrative

convenience and avoidance of delay in payment of proceeds that results from litigation).

It is clear that Congress has chosen to favor administrative efficiency over equitable considerations. FEGLIA's order of payment preference sets forth an inflexible, mandatory procedure which must be strictly adhered. See Metropolitan Life Ins. Co. v. Christ, 979 F.2d 575 (7th Cir. 1992) (FEGLIA establishes procedure to be followed regardless of other documents or the equities of the case); Huff v. Metropolitan Life Ins. Co., 675 F.2d 119 (6th Cir. 1982) (compliance with FEGLIA policy, not intent of insured, is controlling); Metropolitan Life Ins. Co. v. Trainor, 754 P.2d 427, 428 (Colo. Ct. App. 1988) (Congress has indicated its clear intention to make strict compliance with the statutory provisions mandatory). Courts should not second-guess or seek to modify that intent.

Even Appellants concede that the Beneficiary Designation Form is to be governed by the "strict compliance" standard. Moreover, unlike in Fair v. Moore, 397 A.2d 976 (D.C. 1979), which dealt with whether the insured's personnel office qualified as an "employing office" within the meaning of 5 U.S.C. § 8705(a), here, Decedent failed to properly execute the Form as he did not place his signature on the document. Consequently, the October 13 Form is defective and cannot be validated through alleged "internal integrity and consistency" or any other means.

II. THE DESIGNATION OF BENEFICIARY FORM OF OCTOBER 13, 1993, IS INVALID AS DECEDENT FAILED TO SIGN THE DOCUMENT

The sole point of contention is whether Decedent

"signed" the beneficiary form in accordance with the FEGLIA requirements. Decedent made no mark in the box on the Form where he should have signed. It is undisputed that on two previous occasions Decedent had properly completed a designation of beneficiary form and signed his name in cursive in the signature box on the form. Regardless of Petitioners' claims, Petitioners failed to demonstrate the existence of sufficient evidence that Decedent's act of printing his name in the informational entries of the Form constituted a signature. Petitioners are seemingly arguing that the court below failed to recognize that something other than a cursive, hand-written name can act as a signature. Petitioners miss the point. Petitioners cannot establish that Decedent did the act of signing the Form. They failed to submit any evidence that Decedent placed a symbol in the box labeled "Signature of Insured" which could be construed as a signature. See United States v. Wexler, 657 F. Supp. 966, 971 (E.D. Pa. 1987), where "the documents in question were under seal, had stamped signatures, and bore ink initials."

Had Decedent made a marking in the space rather than leaving it blank, perhaps Petitioners' argument have some credence. Decedent did nothing more than identify himself by name, social security number, date of birth, and address, as the insured employee. As the court In re Estate of Hall, 328 F.Supp. at 1309, stated, "a signature must indicate something more than the mere act of identifying the maker of the document in question." Petitioners' argument that strict compliance with the requirement that Decedent have signed the Form in the signature box is unnecessary because FEGLIA does not require that a particular form be used is without merit. The fact is that Decedent used a standard form which clearly indicated the proper place to affix his signature." In a matter such as this where strict compliance is mandated, Petitioners cannot seek a "careful application" of the statute's terms when it suits their position. Decedent failed to place his signature on the Designation of Beneficiary form dated October 13, 1996. As such, that Form has "no force or effect." 5 U.S.C. § 8705(a). In order to refrain from

directly contravening the FEGLIA statute as written and as interpreted, Respondent Powell-Thomas must be acknowledged as the sole beneficiary of Decedent's insurance proceeds.

III. THE DECISION BELOW DOES NOT CONFLICT WITH THE DECISION OF THE UNITED STATES COURT FOR THE MIDDLE DISTRICT OF FLORIDA

The decision by the United States District Court for the District of Columbia does not conflict with the decision the United States District Court for the Middle District of Florida. The Florida Court, as well as the District of Columbia Court applied the requisite standard for issuing summary judgment. The evidence in the case at bar, unlike the Florida case, failed to demonstrate the existence of sufficient evidence necessary to demonstrate any genuine issue as to material facts. Accordingly, the District Court granted Respondent Powell-Thomas' Motion for Declaratory Judgment.

The entry of summary judgment is appropriate when:

> pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. Proc. 56(c). This Court has stated that the moving party always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). This Court has also explained that summary judgment is appropriate, no matter

which party is the moving party, where a party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. See Id. at 322. Once the moving party has carried its burden, the responsibility then shifts to the nonmoving party to show that there exists a genuine issue of material fact. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (citations omitted)

If a person "intended the mark or the name, printed or written, when it is imprinted upon the document, to be his signature and he so adopts it as his act and intends to be bound thereby, it meets the requirements of the law" and constitutes a signature. See State v. Schell, 224 N.E.2d 49, 53 (Ind. 1967). There is no evidence in the record that Decedent adopted some other signature or intended the October 13, 1993 form to be effective. Indeed, in support of this Motion for Summary Judgment Petitioners offered affidavits from two employees at the D.C. Lottery and Charitable Games Control Board: Carolyn V. Osbourne and Deborah L. Roberson. Ms. Osbourne and Ms. Roberson only stated in their affidavits that Decedent, "in their presence...completed, in his own hand, a Designation of Beneficiary form. He completed in his own hand the entire top portion of the form above, "Witness to Signature".... Petitioners' only had generalized evidence that Decedent completed the October 13, 1993 Form. This was insufficient to show that Decedent intended to sign the Form. It did not contradict the more specific evidence of the Decedent's signing two prior forms. The District Court therefore properly determined that there was no genuine issue as to the fact that the October 13, 1993 form was not signed.

In order to withstand a summary judgment motion once the moving party has made a prima facie case to support its claims, the nonmoving party must come forward with

specific facts showing that there is a genuine issue for trial. Fed. R. Civ. Proc. 56(e). For this reason and because Petitioners failed to come forward with such facts, relying instead on bare assumptions and arguments, the District Court made its decision and the Court of Appeals affirmed that decision.

Of note, Petitioners Mary and Ivy Thomas suggest that their due process rights were violated because "due process necessitates that they have an opportunity to demonstrate the decedent's purpose and intent in preparing the [contested] document." This argument is, at best, specious. Petitioners had ample time between August 31, 1994, when the Complaint was filed, until January 22, 1996, when the district court issued its opinion, to use numerous discovery methods to develop their case and demonstrate the decedent's purpose and intent. Petitioners chose not to conduct any discovery. Furthermore, Petitioners suggestion that the Court of Appeals decision to affirm the District Court decision without a hearing or oral argument is also flawed. A Court's decision whether or not to afford a hearing or oral argument is discretionary.

CONCLUSION

The United States District Court for the District of Columbia, as well as, the United States Court of Appeals for the District of Columbia Circuit correctly decided that as a matter of law Respondent Donna Powell-Thomas is the sole beneficiary to the FEGLI policy of the Decedent. The courts correctly applied the traditional summary judgment standard and analysis in complete conformity with the law.

The United States District Court decided in favor of Respondent Donna Powell-Thomas, based on the record. The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision, ruling that "the evidence as a whole does not support concluding that [Decedent] intended his name as printed . . . on the

contested form to constitute his signature." The Court of Appeals denied the Petitioners' Motion for Rehearing and Suggestion for Rehearing en Banc. In denying the motion, the Court stated that:

> "[petitioners] have failed to demonstrate that rehearing is warranted. This court affirmed the judgment of the district court because the evidence proffered . . . failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured . . . intended to sign the contested form . . . ."

(A. 1a)

The rulings in this matter do not conflict with any decisions of this Court or any other court. The decisions are correct in light of applicable legal principles and FEGLIA case authority. Petitioners only seek another chance to reargue their case before this Court. Therefore, Respondent Powell-Thomas requests that the petition be denied.

Respectfully submitted,

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